

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties. This Settlement Agreement is entered into by and between Ema Bell (“Bell”) and Chug, Inc. (“Chug”). Together, Bell and Chug are collectively referred to as the “Parties.” Bell is an individual who resides in the State of California, and seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Bell alleges that Chug is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code § 25249.6, et seq. (“Proposition 65”).

1.2 General Allegations. Bell alleges that Chug has exposed individuals to the chemical Bisphenol A (BPA) from its sales of “More than Magic” iPhone cases without first providing users and consumers of the product with a clear and reasonable health hazard exposure warning as required pursuant to Proposition 65. BPA is listed under Proposition 65 as a chemical known to the State of California to cause reproductive toxicity.

1.3 Product Description. The products covered by this Settlement Agreement are “More than Magic” iPhone cases (the “Products”) that have been imported, distributed, offered for sale and/or sold in California by Chug.

1.4 Notice of Violation. On September 8, 2020, Bell served Target Brands, Inc, Target Corporation (collectively, “Target”), and various public enforcement agencies with a document entitled “Notice of Violation of California Health & Safety Code § 25249.6, et seq.” (the “Notice”) alleging that Target was in violation of California Health & Safety Code § 25249.6, for failing to warn California consumers and customers that use of the Products will expose them to BPA. Chug was subsequently identified as the manufacturer and supplier of the products in the Notice and entered into negotiations with Bell to resolve Bell’s claims concerning exposure to BPA from use of the Products. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.5 No Admission. Chug denies the material factual and legal allegations contained in the Notice and maintains that, to the best of its knowledge, all products that are or have been sold and distributed in California, including the Products, have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Chug of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Chug of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Chug. However, this § 1.5 shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, Chug maintains that it has not knowingly manufactured, or caused to be manufactured, the Products for sale in California in violation of Proposition 65.



1.6 Effective Date. For purposes of this Settlement Agreement, the term “Effective Date” shall mean the date this Agreement is last executed by the Parties.

2. INJUNCTIVE RELIEF

2.1 Warning or Reformulation of Products. No later than sixty (60) days after the Effective Date, Chug agrees to manufacture, import, or purchase for sale in California Products that are: (a) Reformulated Products pursuant to § 2.2, below; or (b) Products that are labeled with a clear and reasonable exposure warning pursuant to §§ 2.3 and 2.4, below. For purposes of this Settlement Agreement, “Reformulated Products” are Products that are in compliance with the standard set forth in § 2.2, below. The warning requirement set forth in §§ 2.3 shall not apply to any Reformulated Products or Products that are already in the stream of commerce as of the Effective Date or that Chug places into the stream of commerce within 60 days of the Effective Date.

2.2 Reformulation Standard. “Reformulated Products” shall mean any Products intended for retail sale in California that contains BPA on any component to which consumers are *not* exposed to in excess of 3 micrograms per day of dermal exposure from solid materials.

2.3 Warning Language. Where required, Chug Products shall provide a Proposition 65 warnings as follows. Chug may use any of the following warning statements in full compliance with this Section:

- (a)  **WARNING:** This product can expose you to chemicals including Bisphenol A (BPA), which is known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.
- (b)  **WARNING: Reproductive Harm – www.P65Warnings.ca.gov.**

2.4 Compliance with Warning Regulations. The warning provided pursuant to § 2.3 shall be prominently affixed to or printed on the Product packaging or labeling and displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. A warning may be contained in the same section of the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning the use of the Products and shall be at least the same size as those other safety warnings. Where the sign, label or shelf tag for the product is not printed using the color yellow, the symbol may be printed in black and white.

(a) The requirements for warnings, set forth above are imposed pursuant to the terms of this Settlement Agreement. The Parties recognize that these are not the excluding methods of providing a warning under Proposition 65 and its implementing regulations;

(b) If Proposition 65 warnings for BPA should no longer be required, Chug shall have no further obligations pursuant to this Settlement Agreement; and

(c) In the event the Office of Environmental Health Hazard Assessment (“OEHHA”) promulgates one or more regulations requiring or permitting warning text and/or methods of transmission different than those set forth herein, Chug shall be entitled to use, at its discretion, such other warning text and/or method of transmission without being deemed in breach of this Agreement.

3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)

3.1 Civil Penalty Payment. In settlement of all the claims referred to in this Settlement Agreement, Chug shall pay \$2,500.00 as a Civil Penalty in accordance with this Section. The Civil Penalty payment shall be allocated in accordance with California Health & Safety Code §§ 25249.12(c)(1) and (d), with 75% of the Penalty remitted to OEHHA and the remaining 25% of the Penalty remitted to Bell. Bell’s counsel shall be responsible for delivering the Civil Penalty Payments owed pursuant to this Settlement Agreement.

4. REIMBURSEMENT OF FEES AND COSTS

The Parties acknowledge that Bell and her counsel offered to reach preliminary agreement on the material terms of this dispute before reaching terms on the amount of fees and costs to be reimbursed to them. The Parties thereafter reached an accord on the compensation due to Bell and her counsel under general contract principles and the private attorney general doctrine and principles codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this agreement. Under these legal principles, Chug shall reimburse Bell's counsel \$31,000.00 for fees and costs incurred as a result of investigating and bringing this matter to Chug's attention, and negotiating a settlement in the public interest. Payment pursuant to this Section shall be issued by or before April 15, 2021 in accordance with Section 5.1, below.

5. PAYMENT PROCEDURE

5.1 Wire Transfer Payment. By or before April 15, 2021, Chug shall pay via wire transfer payment to Brodsky & Smith, LLC the sum of Thirty-Three Thousand Five Hundred Dollars (\$33,500.00) as full and final satisfaction of any and all monies owed pursuant to this Agreement. Wire transfer payment instructions are as follows:

ABA 026009593
[International Banks can use SWIFT-BIC: BOFAUS3N]
Bank of America, N.A.
100 West 33rd Street
New York, NY 10001
a/c 6550113516
Name: Merrill Lynch
Ref: For Final Credit 870-07119 Brodsky & Smith, LLC

5.2 Tax Documentation. Chug agrees to provide a completed IRS 1099 for its payments to, and Bell agrees to provide IRS W-9 forms for, each of the following payees under this Settlement Agreement:

- (i) "Ema Bell" whose address and tax identification number shall be provided within five (5) days after this Settlement Agreement is fully executed by the Parties;

(ii) “Brodsky & Smith, LLC” (EIN: 23-2971061) at the address provided in Section 3.2(a)(i); and

(iii) “Office of Environmental Health Hazard Assessment” 1001 I Street, Sacramento, CA 95814.

6. RELEASE OF ALL CLAIMS

6.1 Release of Chug and Downstream Customers and Entities. This Settlement Agreement is a full, final and binding resolution between Bell, acting on her own behalf, and Chug, of any violation of Proposition 65 that was or could have been asserted by Bell or on behalf of her past and current agents, representatives, attorneys, successors, and/or assigns (“Releasors”) for failure to provide warnings for alleged exposures to BPA contained in the Products, and Releasors hereby release any such claims against Chug and its parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, attorneys, successors and assignees, and each entity to whom Chug directly or indirectly distributes or sells the Products, including but not limited to, downstream distributors, wholesalers, customers, retailers, including but not limited to Target, and its respective subsidiaries, affiliates and parents, franchisees, cooperative members and licensees (collectively, the “Releasees”), from all claims for violations of Proposition 65 through the Effective Date or within 60 days after the Effective Date.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to §§ 3 and 4 above, Bell, on behalf of herself, her past and current agents, representatives, attorneys, successors and/or assignees, hereby covenants not to sue and waives any right to institute, participate in, directly or indirectly, any form of legal action and releases all claims that she may have, including without limitation, all actions and causes of action in law and in equity, all obligations, expenses (including without limitation all attorneys’ fees, expert fees, and investigation fees, and costs), damages, losses, liabilities and demands against any of the Releasees of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of the alleged or actual exposure to BPA from use of the Products.

6.2 Chug's Release of Bell. Chug, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against Bell, her attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Bell and/or her attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter or with respect to the Products.

6.3 California Civil Code § 1542. It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Products will develop or be discovered. Bell on behalf of herself only, on one hand, and Chug, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through the Effective Date, including all rights of action therefor. The Parties acknowledge that the claims released in §§ 6.1 and 6.2, above, may include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such unknown claims. California Civil Code § 1542 reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Bell and Chug each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

64 Deemed Compliance with Proposition 65. The Parties agree that compliance by Chug with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to BPA from use of the Products.

6.5. Public Benefit. It is Chug's understanding that the commitments it has agreed to herein, and actions to be taken by Chug under this Settlement Agreement, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the intent of Chug that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Chug failure to provide a warning

concerning exposure to BPA prior to use of the Products it has manufactured, distributed, sold, or offered for sale in California, or will manufacture, distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to those Products addressed in this Settlement Agreement, provided that Chug is in material compliance with this Settlement Agreement.

7. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected but only to the extent the deletion of the provision deemed unenforceable does not materially affect, or otherwise result in the effect of the Settlement Agreement being contrary to the intent of the Parties in entering into this Settlement Agreement.

8. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the law of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable or limited by reason of law generally, or as to the Products, Chug shall provide written notice to Bell of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, a Product is so affected.

9. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and personally delivered or sent by: (i) first-class (registered or certified mail) return receipt requested; or (ii) overnight or two-day courier on any party by the other party to the following addresses:

For Chug:

Paul R. Smith
Larkin Hoffman Daly & Lindgren Ltd.
8300 Norman Center Drive, Suite 1000
Minneapolis, MN 55437

For Bell:

Evan J. Smith
Brodsky & Smith, LLC
Two Bala Plaza, Suite 805
Bala Cynwyd, PA 19004

Either party, from time to time, may specify in writing to the other party a change of address to which all notices and other communications shall be sent.

10. COUNTERPARTS: SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or .pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Bell agrees to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f).

12. MODIFICATION

This Settlement Agreement may be modified only by a written agreement of the Parties.

13. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.

14. AUTHORIZATION

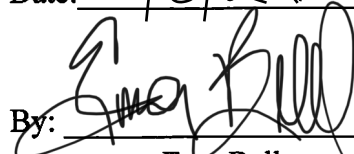
The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained of this Settlement Agreement.

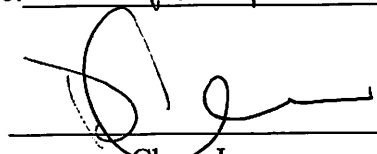
AGREED TO:

AGREED TO:

Date: 5/3/2021

Date: 7/30/21

By: 
Erin Bell

By: 
Chug, Inc.